IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
FIRST APPEAL NO.796 OF 2005

Prabhakar Popat Bagul ...Appellant
Vs.
The State of Maharashtra ...Respondent

WITH
FIRST APPEAL NO.798 OF 2005

Malasabai Yadav Bagul ...Appellant

Vs.

The State of Maharashtra ...Respondent

WITH
FIRST APPEAL NO.802 OF 2005

Khanderao Gopala Bhalerao & Anr. ...Appellants

Vs.

The State of Maharashtra ...Respondent

Mr.A.J.Ahuja for the Appellants
Mr.K.K.Tated,A.G.P. for the Respondent.

CORAM: A.S.OKA, J.
DATED: APRIL 24,2006.

P.C.:

1. Admit. Shri Tated, A.G.P. waives service on behalf of the Respondent. Taken up for hearing forthwith.

2. It is not in dispute that the facts of these three Appeals are identical and therefore for the sake of convenience, reference is made to the facts of the case in First Appeal No.796 of 2005.

3. The Appellant is the claimant in a reference under

section 18 of the Land acquisition Act, 1894 (hereinafter referred to as the said Act). The reference has been dismissed by the Joint District Judge, Nasik on the ground that the application for reference was barred by limitation. The learned Advocate for the Appellant submitted that the Respondent did not produce the record pertaining to service of notice under section 12(2) of the said Act. He submitted that it was the specific case of the Appellant that notice under section 12(2) of the said Act was not served and therefore, it was for the State to produce the relevant record which was not produced. In the alternative, he has stated that as the Appellant has not stepped into witness box, matter may be remanded to the Reference Court with liberty to the Appellant to lead evidence. The learned A.G.P. pointed out that initially an assertion was made in the application under section 18 of the said Act that the Appellant had received notice under section 12(2) of the said Act. He, therefore, submitted that the Appellant cannot take up the stand at this stage that the notice was not served. He submitted that the reference court was right in holding that the reference was time barred.

4. I have considered the submissions. In paragraph No.16 of the impugned Judgment, the Reference Court has noted that the though a stand was taken in application for reference that a notice under Section 12(2) was served, later on the reference

application was allowed to be amended for the purposes of raising the contention that the notice under section 12(2) was not served to the Appellant. It appears that the reference in question was heard along with several other references under section 18 of the said Act and only one of the claimants in the companion reference proceedings stepped into witness box on behalf of all the claimants. The said claimant viz. Shriram Mali deposed before the court that the none of the claimants received notice under section 12(2) of the said Act. Thus, an endeavour was made on behalf of the claimants to prove that the notice under section 12(2) was not served. In my view, the Appellant was the only person who was having personal knowledge regarding the dispute pertaining to service of notice should have stepped into witness box. The evidence of the claimant in companion reference proceedings was not enough. It is very difficult to accept the submission of the Advocate for the Appellant that the burden was on the State to produce the record to prove that there was service of notice. If the Appellant did not personally step into witness box for stating that he did not receive the notice, the Respondent was under no obligation to produce the record. Only if the Appellant had entered the witness box and had stated that he did not receive the notice under section 12(2) of the said Act, the question of production of record would have arisen.

5. The Appellant has lost his land on account of compulsory acquisition. The reference application was dismissed on the ground that it was barred by limitation. In my view, the Appellant deserves to be given one more opportunity to lead evidence on the issue of limitation. It appears that as large number of reference applications were heard together, only one of the claimants was examined on behalf of the other claimants.

6. Hence, I pass the following order :

FIRST APPEAL NO.796 OF 2005

i) Impugned Judgment and Award passed by the Reference Court in L.A.R.No.60 of 1993 is quashed and set aside and the said reference is restored to file.

ii) Parties are directed to appear before the learned Joint District Judge, Nasik on 3rd July 2006.

iii) It is made clear that the Appellant is permitted to lead evidence only on the issue relating to limitation. After the Appellant leads evidence, it will be open for the Respondent to lead evidence on this aspect.

iv) If the Reference Court finds that the application for

reference was within limitation, the reference made at the instance of the Appellant will be decided on the merits on the basis of evidence which is already adduced by the parties in the group of references decided by the impugned Judgment.

v) The learned Joint District Judge Nashik will decide the reference as expeditiously as possible and preferably on or before end of January 2007.

FIRST APPEAL NO.798 OF 2005

i) Impugned Judgment and Award passed by the Reference Court in L.A.R.No.164 of 1993 is quashed and set aside and the said reference is restored to file.

ii) Parties are directed to appear before the learned Joint District Judge, Nasik on 3rd July 2006.

iii) It is made clear that the Appellant is permitted to lead evidence only on the issue relating to limitation. After the Appellant leads evidence, it will be open for the Respondent to lead evidence on this aspect.

iv) If the Reference Court finds that the application for reference was within limitation, the reference made at the instance of the Appellant will be decided on the merits on

the basis of evidence which is already adduced by the parties in the group of references decided by the impugned Judgment.

v) The learned Joint District Judge Nashik will decide the reference as expeditiously as possible and preferably on or before end of January 2007.

FIRST APPEAL NO.802 OF 2005

i) Impugned Judgment and Award passed by the Reference Court in L.A.R.No.109 of 1993 is quashed and set aside and the said reference is restored to file.

ii) Parties are directed to appear before the learned Joint District Judge, Nasik on 3rd July 2006.

iii) It is made clear that the Appellants are permitted to lead evidence only on the issue relating to limitation. After the Appellant leads evidence, it will be open for the Respondent to lead evidence on this aspect.

iv) If the Reference Court finds that the application for reference was within limitation, the reference made at the instance of the Appellants will be decided on the merits on the basis of evidence which is already adduced by the parties in the group of references decided by the impugned Judgment.

v) The learned Joint District Judge Nashik will decide the reference as expeditiously as possible and preferably on or before end of January 2007.

Judge.